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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/241,508	02/01/1999	JAMES R. EVANS	P01.12-0042	8819

7590

03/06/2002

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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 03/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/241,508

Applicant(s)

EVANS ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 60-66 and 68-77 is/are pending in the application.
- 4a) Of the above claim(s) 75-77 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 60-66, 68-74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims 75-77 drawn to an invention nonelected without traverse in Paper No. 4. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See MPEP § 821.01.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 71 is rejected under 35 U.S.C. 102(b) as being anticipated by Carollo [Pat. No. 5,622,742].

Carollo teaches a method of cutting a dough sheet by providing a dough sheet with two surfaces (Figure 3, 14) and pinching the dough surfaces together while shaping and cutting the dough sheet with a movable blunt cutter (Figure 6, 16).

3. Claims 71-74 are rejected under 35 U.S.C. 102(b) as being anticipated by Makowecki [Pat. No. 5,687,638].

Makowecki teaches a method of cutting a dough sheet by providing a sheet of dough with two surfaces (Figure 1, 26), pinching the dough surfaces together while shaping and cutting the dough sheet with a movable cutter (Figure 5, 32), the cutter having blunt portions at an inner periphery (Figure 5, 41), cutting edges which are geometric figures.

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at an outer periphery (Figure 5, 39; Figure 3), the inner and outer peripheries being different shapes (Figure 5, 39 & 41), a conveyor (Figure 2, 28), and a steam cooker where the dough pieces would rise (Figure 2, 44).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carollo.

Carollo teaches a dough cutting device comprising a rounded blunt portion which pinches the dough surfaces together and then cuts them (Figure 6, 16). It would have been obvious to one of ordinary skill in the art to adjust the size and curvature of Carollo since rolling pins were commonly greater than 6mm in size and since this would have been done during the course of normal experimentation.

6. Claims 60-64 and 68-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makowecki.

Makowecki teaches a dough cutting device comprising a cutter with a rounded blunt inner portion (Figure 5, 41), a cutter edge in the form of a flat tip on the periphery (Figure 5, 39), a rotatable drum (Figure 5, 30), the blunt portion and cutter edge having different geometric shapes (Figure 5). It would have been obvious to one of ordinary

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skill in the art to vary the size and curvature of the round blunt portion of Makowecki since this would have been done during the course of normal experimentation and optimization.

7. Claims 65-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makowecki as applied above, in view of Simelunas [Pat. No. 4,534,726].

Makowecki teaches the above mentioned concepts. Makowecki does not teach a walking head. Simelunas teaches a method of cutting dough by use of a reciprocally mounted, walking head (column 5, line 66 to column 6, line 21). It would have been obvious to one of ordinary skill in the art to incorporate the reciprocally mounted, walking head of Simelunas into the invention of Makowecki since both are directed methods of cutting dough with blunt cutters, since Makowecki already includes a conveyor belt, and since the reciprocally mounted, walking head of Simelunas would press the blunt portion directly down into the dough (Figure 8) rather than entering at an angle as with the roller of Makowecki (Figure 5) and thus decrease the chance of damaging or misshaping the dough.

8. Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over Makowecki as applied above, in view of RADEMAKER B.V.

Makowecki teaches the above mentioned concepts. Makowecki does not teach a hexagonal shape enclosing a circular shape. RADEMAKER B.V. teaches a cutting roller with hexagonal shapes and circular shapes within other shapes (page 14). It would have been obvious to one of ordinary skill in the art to incorporate the shapes of RADEMAKER B.V. into the invention of Makowecki since both are directed to rollable

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dough cutters, since Makowecki already includes substantially circular shapes (Figure 3), since the use of multiple shapes was commonly known as shown by RADEMAKER B.V., and since varying the shape of the cut dough would have been done during the course of normal experimentation and optimization.

### ***Response to Arguments***

2. Applicant's arguments filed November 27, 2002 have been fully considered but they are not persuasive.

Applicant argues that Carollo does not teach a movable cutter. However, attention is drawn to Figure 4, 16 of Carollo.

Applicant argues that Makowecki does not teach both "shaping and cutting" of the dough. However, attention is drawn to Figure 5 of Makowecki which illustrates the cutter first shaping the dough into a ravioli-type shape, then severing it away from the remainder of the dough.

Applicant argues that Makowecki does not teach a blunt portion at its inner periphery and a cutting edge at its outer periphery. However, as explained in the prior rejection, this was clearly illustrated in Figure 5 where the cutting edge is located at the outer periphery of the roller. Also, the blunt portion is clearly closer to the roller's axis of rotation and thus at an inner periphery as shown in Figure 5.

**Conclusion**

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-872-9311 for After Final communications.

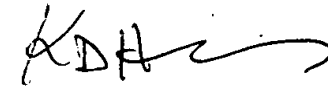
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew Becker  
February 27, 2002



**KEITH HENDRICKS  
PRIMARY EXAMINER**